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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,195	04/25/2007	Marcus Vetter	085449-0203	6937
22428 7590 01/10/2011 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
ROY, BAISAKHI				
ART UNIT		PAPER NUMBER		
3777				
MAIL DATE		DELIVERY MODE		
01/10/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,195

Applicant(s)

VETTER ET AL.

Examiner

BAISAKHI ROY

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 23-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/25/07, 8/22/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-15 and 23-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Shahidi (7844320). Shahidi discloses a method for navigation during medical interventions on tubular organ structures 112, 117 by recording and storing static image data of the organ structure before the intervention (col. 6 lines 42-51), extracting the organ structures (col. 13 lines 65-col. 14 line 5), converting into geometric description used during the medical intervention for instrument/organ recording 109 (col. 6 lines 52-col. 7 line 38). The instrument 109 is spatially localized by a tracking system or optical tracking system having a sensing unit 105 and is successively corrected in relation to the static data by a transformation that is preferably defined by an optimization method, taking into account the geometric description and information on the previous distance covered by the instrument or the static data are successively corrected in relation to the instrument position and the position of the instrument is associated with the anatomical structures in the static image data (col. 13 lines 60-col. 14 lines

67). The information on the distance covered represents the continuously recorded or constantly refreshed spatial position of the instrument and the instrument tip 115 and several positions along the instrument are recorded as the spatial position of the instrument (col. 7 lines 53-col. 8 line 16). The information on the distance covered contains further features which can in particular represent ramifications of the tubular organ structures during advancement of the instrument (col. 8 lines 31-52). The method also involves applying external or internal markers 113, 114 and the movement of the tubular organ structure is recorded and included in the calculation of the transformation (col. 5 lines 38-42, col. 12 lines 28-38, col. 18 lines 43-56). The movement of the patient or patient-specific movement is taken into account when calculating the position (col. 13 lines 21-24). Therefore the images are recorded by registering the instrument position and taking into account the calculated cyclical movements and obtained in real time resulting in continually updating the images during the procedure (col. 7 lines 29-37).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shahidi in view of Green (5928137). Shahidi teaches a neurological surgical

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procedure. In the same field of endeavor Green teaches a system and method for endoscopic imaging and surgery including bronchoscopy interventions to track a tubular organ structure (col. 3 lines 40-col. 4 line 5). It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Green to modify Shahidi such that bronchoscopy procedures can be effectively monitored and treated.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (9:00 a.m. - 5:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Chen can be reached on 571-272-3672. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BR

/B. R./

Examiner, Art Unit 3777

/Tse Chen/

Supervisory Patent Examiner, Art Unit 3777